

Exhibit F

ANTOY BELL - VOLUME 1 - July 15, 2020

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 MIDLAND/ODESSA DIVISION

4 TIMOTHY W. REPASS AND)
5 WILLIAM SCOTT MCCANDLESS,)
6 INDIVIDUALLY AND ON)
7 BEHALF OF ALL OTHERS)
8 SIMILARLY SITUATED,) CIVIL ACTION
9)
10 Plaintiffs,) NO. 7:18-CV-107-DC-RCG
11 VS.)
12)
13 TNT CRANE AND RIGGING,)
14 INC.,)
15)
16 Defendant.)
17 -----
18 ORAL DEPOSITION OF
19 ANTOY BELL
20 AS DESIGNATED REPRESENTATIVE OF
21 TNT CRANE & RIGGING, INC.
22 July 15, 2020
23 Volume 1
24 -----
25 ORAL DEPOSITION OF ANTOY BELL, Volume 1, produced
as a witness at the instance of the Plaintiffs, and duly
sworn, was taken in the above-styled and numbered cause
on the 15th of July, 2020, from 10:03 a.m. to 2:58 p.m.,
before Julie A. Jordan, CSR, RPR, in and for the
State of Texas, reported by machine shorthand via Zoom,
at the offices of TNT Crane & Rigging, Inc., 925 South

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1 Loop West, Houston, Texas 77054, pursuant to the Federal
2 Rules of Civil Procedure and any provisions stated on
3 the record or attached hereto.

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1 going to assume that you both heard and understand the
2 question. Okay?

3 A. Okay.

4 Q. I'm not trying to make this a marathon
5 session, so if you need a break at any time feel free to
6 ask for one. The only thing that I would ask you to do
7 is answer any question that's on the table before we
8 break.

9 Is that acceptable?

10 A. That's fine.

11 Q. Okay. And we're taking this deposition
12 pursuant to Rule 30(b)(6), and so there's some weirdness
13 in the meaning of "you" I found in these depositions.

14 Unless I indicate otherwise, when I say
15 "you" during this deposition, I'm referring to TNT as
16 the witness here today.

17 Is that acceptable?

18 A. Yes, sir.

19 Q. My understanding is you're a lawyer, is that
20 right, Mr. Bell?

21 A. That is correct.

22 Q. Are you licensed to practice in the state of
23 Texas?

24 A. I am.

25 Q. How long have you been licensed?

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1 A. Since 2005.

2 Q. And what year did you graduate law school?

3 A. 2004.

4 Q. And where did you go to law school?

5 A. The University of Iowa.

6 Q. And where did you go to college?

7 A. Morehouse College.

8 Q. And what year did you graduate from Morehouse?

9 A. 1996 -- I'm sorry, 2000.

10 Q. So you started in 1996 and graduated in 2000,
11 is that right?

12 A. That is correct.

13 Q. By the way, one thing we didn't talk about is,
14 if you -- if I ask you a question, please try to give me
15 a verbal response. It's hard for the court reporter to
16 take down a shake of the head.

17 Have you ever -- well, let me ask a
18 different question.

19 By whom are you currently employed?

20 A. TNT Crane and Rigging, Inc.

21 Q. And you are its general counsel currently, is
22 that true?

23 A. No, sir.

24 Q. What is your position?

25 A. Director of human resources.

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1 A. Yes.

2 Q. And when was that?

3 A. That was prior to the issuance of these memos.

4 Q. So the same time you advised it about the
5 preparatory concluding work, you advised it about travel
6 time. Is that true?

7 A. That was one of the times, yes.

8 Q. And what did you tell TNT insofar as the
9 legality of what it proposed to do was concerned?

10 MR. JODON: I want to object to the form
11 of the question. I think it's vague with respect to
12 the -- you know, the particular issue of travel that
13 you're talking about.

14 MR. MORELAND: Okay. I'll rephrase.
15 That's fair.

16 Q. (BY MR. MORELAND) What is it that you told
17 TNT about whether or not it was obligated to pay travel
18 time?

19 A. I told TNT when obligations to pay travel took
20 place.

21 Q. And what specifically did you tell them in
22 that regard?

23 A. We -- we spoke of when traveling from the
24 branch location to a job site and when traveling from
25 location to location.

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1 Q. And what did you tell them about the travel
2 from branch to job site?

3 A. I told them when -- when an employee leaves
4 the branch and travels to a job site, that we must pay
5 for that time.

6 Q. Were there any exceptions to that rule that
7 you conveyed to the company?

8 A. No, I don't recall there being any exceptions.

9 Q. And who specifically at the company did you
10 advise this?

11 A. There was more than one person. Particularly
12 I remember speaking with Houston branch manager and at
13 the time San Antonio branch manager Gary Harvey.

14 Q. Was this before or after Mr. Harrison began
15 working at TNT?

16 A. This would have been during the time he was
17 working at TNT.

18 Q. Did you tell him or convey this advice to him
19 as well?

20 A. Yes, I have conveyed this advice to him.

21 Q. On how many occasions?

22 A. I don't recall.

23 Q. And you conveyed this advice to him before
24 Mr. Repass filed this lawsuit, is that true?

25 A. That is true.

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1 Q. And I assume that with respect to the travel
2 from location to location you gave them the same advice
3 that the company should pay for it, is that right?

4 A. Yes.

5 Q. And did you give that same advice to the same
6 people?

7 A. To the same three people that I spoke about?

8 Q. Yes, sir.

9 A. Yes.

10 Q. I just want to make sure the record is clear
11 on this.

12 So before this lawsuit was filed -- well,
13 let me start over.

14 Did you give this advice starting in, say,
15 2015?

16 A. I couldn't tell you the exact year. It could
17 have been prior to that as well.

18 Q. Did you convey this advice in connection with
19 discussions about the drive time memos we've touched on
20 today?

21 A. That was one time that I did, yes.

22 Q. On what other occasions did you give this
23 advice?

24 A. I spoke with the branch manager in
25 Ratliff City, Oklahoma, about travel time.

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1 Q. Let me just limit it to branch managers in
2 Texas just to make it a little easier on everybody.
3 Okay?

4 On what other occasions did you convey
5 this advice to branch managers in the state of Texas?

6 A. As I reference, I don't recall every single
7 time what date that was going on. So I spoke with a
8 branch manager in Beaumont on the same topic as well.

9 Q. So for now, we know that prior to the
10 institution of this lawsuit, you advised Mr. Murray in
11 Houston, Mr. Harvey in San Antonio, and Mr. Harrison in
12 Midland that you -- it was your opinion that TNT was
13 obligated to pay for the travel time from the branch to
14 the job site. Is that true?

15 A. That is correct.

16 Q. And did you give TNT any advice about whether
17 or not it was obligated to pay for the travel time from
18 the job site to the branch -- back to the branch?

19 A. I did.

20 Q. And what was your advice in that regard?

21 A. We went through scenarios and in scenarios I
22 advised this is when we compensate for the time from the
23 branch back -- from the job site back to the branch.

24 Q. And what were those scenarios?

25 A. I couldn't recall each and every scenario we

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1 this advice?

2 A. They said okay.

3 Q. And having reviewed the documents in the case,
4 do you feel like they followed your advice?

5 A. I do.

6 Q. I want to talk to you a little bit about the
7 reporting relationships at TNT.

8 Now, my understanding is there's a branch
9 manager over each branch, is that right?

10 A. That is correct. That is --

11 Q. There's an operations -- go ahead.

12 A. That is -- in general, yes. Some branches do
13 not have a branch manager.

14 Q. Houston, San Antonio, Midland, they had branch
15 managers, right?

16 A. Yes.

17 Q. And do each of those three branches also have
18 operations managers and operations supervisors?

19 A. No.

20 Q. Midland has an operations manager, correct?

21 A. They did, yes.

22 Q. Okay. Is that position no longer in
23 existence?

24 A. Correct.

25 Q. Okay. And that was occupied by Mr. Hastey, is

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1 that right?

2 A. Correct.

3 Q. Is he still employed by TNT?

4 A. Yes.

5 Q. In what position?

6 A. Sales.

7 Q. Who did the operators report to?

8 A. Depends on the branch.

9 Q. Who do they report to in Midland?

10 A. In Midland they report to the operations
11 manager.

12 Q. Who is that now?

13 A. So now there is no operations manager. They
14 report directly to the branch manager.

15 Q. Okay. Who do the crane operators report to in
16 San Antonio?

17 A. To the branch manager.

18 Q. And who do they report to in Houston?

19 A. To the operations manager.

20 Q. And who does the operations manager report to?

21 A. In Houston?

22 Q. Yes, sir.

23 A. To the branch manager.

24 Q. And who do the branch managers report to?

25 A. Branch managers report to -- it depends.

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1 Q. Explain that, please.

2 A. There are times and -- and some branch
3 managers will report to a vice president. Then there
4 are some times branch managers will report directly to
5 the president or another branch manager.

6 Q. Who does -- did you say "or another branch
7 manager"?

8 A. Correct.

9 Q. Who does the Midland branch manager report to?

10 A. The president.

11 Q. And who does the San Antonio branch manager
12 report to?

13 A. The president.

14 Q. And who does the Houston branch manager report
15 to?

16 A. The president.

17 Q. And who is the president?

18 A. Kregg Lundsford.

19 Q. Did you get -- did you say Lundsford?

20 A. Lundsford, yes, sir.

21 Q. And did you give Mr. Lundsford the same advice
22 that you gave to the branch managers about the
23 compensability of drive time that we've discussed?

24 A. I would have. I don't recall off the top of
25 my head having any direct conversations with him about

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1 first work of the day?

2 A. Yes.

3 Q. And the first work of the day could involve
4 loading tools, getting fuel, loading ice or other
5 supplies that they needed in order to perform their
6 duties as crane operators. True?

7 A. It could -- some of those things it could
8 start the day, yes.

9 Q. Which ones do you believe do not start the
10 first work -- do not constitute the first work of the
11 day?

12 A. I think loading ice is required as a duty of
13 the crane operator.

14 Q. Anything else?

15 A. I'm trying to remember if -- all you said.
16 You said tools, ice.

17 Q. The fuel or other supplies necessary to
18 perform their work.

19 A. Yeah. If it's necessary to perform their work
20 yes.

21 Q. So you would agree with me that if it's
22 necessary to perform their work, the operators loading
23 that -- those items, when they do, that they're
24 performing the first work of the day, correct?

25 A. If it's necessary to perform their work, yes.

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1 fair to conclude that dispatchers could -- well, at
2 least sign off on time sheets for operators, right?

3 A. Based on this memo, yes.

4 Q. And what other types of authority did
5 dispatchers have over operators? What could dispatchers
6 tell operators to do insofar as their work is concerned?

7 A. Dispatchers tell crane operators which job to
8 go and -- and what time to be there.

9 Q. So dispatchers can tell crane operators when
10 to be and where to be. Is that true?

11 A. Yes.

12 Q. And dispatchers can also and do direct crane
13 operators to, for example, pick up their riggers if a
14 rigger is required on a job, right?

15 A. Sometimes.

16 Q. Mr. Bell, I'm showing you a memo dated
17 June 15th, 2015, TNT Bates No. TNT 6166.

18 Take a moment to review it and let me know
19 when you're ready to discuss it.

20 A. Scroll -- scroll down a little bit. I want to
21 see the top of it.

22 Q. There you go. Here, let me --

23 A. Okay.

24 Q. -- pull it back a little bit.

25 How -- how's that?

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1 operators in this case that they were specifically told
2 that? Is that what you're saying?

3 A. I'm saying that someone specifically told all
4 38 of those crane operators that they must put down all
5 hours worked as well as our handbook reads that if they
6 expect to be compensated for it, they should put that
7 down on their time sheet.

8 Q. That's what you think the policy says, the
9 handbook says?

10 A. Yes.

11 Q. By the way, this memo is dated April 1st,
12 2018.

13 How long had this policy been in effect?

14 A. This -- which -- which part of this policy are
15 you referring to?

16 Q. Okay. Fair question.

17 There -- it's my understanding -- let me
18 see if I can hurry this along.

19 It's my understanding that some version of
20 this policy has been in -- in effect since at least
21 March of 2014. Is that right?

22 A. Some version of this policy was in effect
23 since we started working out of Midland.

24 Q. And when was that?

25 A. Oh, I believe in 2012.

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1 Q. And this was before Mr. Harrison was employed
2 with the company?

3 A. Yes. Well I won't say employee.

4 Q. What was the arrangement --

5 A. Before he was branch manager --

6 Q. Sorry.

7 A. Okay. I'm sorry. I wouldn't say employee,
8 but before he was branch manager there.

9 Q. The earliest version of this policy, I'll tell
10 you, is -- that I've seen is one from 2014, which is
11 there.

12 Do you see that?

13 A. Yes, sir.

14 Q. And are you saying there's one earlier from
15 2012?

16 A. I'm saying that was the policy earlier.

17 Q. And so this was the first written version of
18 this -- of this policy, is that correct?

19 A. Yes, sir.

20 Q. So what is the reason or reasons -- what are
21 the reasons for this policy?

22 A. To explain the timekeeping policies -- to
23 further explain the timekeeping policies and how per
24 diem is paid.

25 Q. Anything else?

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1 cut off at midnight and started work the next day.

2 Q. All right. Do you see anything else that
3 insures compliance with the FLSA?

4 A. If you could scroll down some.

5 Q. (Scrolling.)

6 A. (Reviewing document.) Scroll a little bit
7 more for me.

8 Q. (Scrolling.)

9 A. (Reviewing document.) 4 here at the bottom,
10 "Safety meeting time should be documented accurately."

11 Q. Is that all?

12 A. 1, "Lable (sic) equipment that is being
13 pre-tripped." And that's all I see. He's on 8450.

14 Q. By the way, referring back to 1, TNT expected
15 its operators to pretrip their vehicles before heading
16 out into the field, right?

17 A. Before driving a vehicle, yes.

18 Q. All right. I just want to -- so we've seen
19 the one from March of 2014. I'm going to show you the
20 others just to get them on record here.

21 A. I'm sorry about that beeping. I can't figure
22 out how to shut that program off.

23 Q. Oh. That's -- I'm not going to complain about
24 you and technology in this deposition.

25 Okay. I'm showing you 5598 through 5599.

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1 And this -- 5598 is an iteration of this policy from
2 March of 2015, is that right?

3 A. Yes.

4 Q. And then 5599 is an iteration from
5 April of 2016, correct?

6 A. Correct.

7 Q. And as each of these policies came out, they
8 changed things slightly. Is that true?

9 A. Yes, sir.

10 Q. And did later ones supplant earlier ones?

11 A. Yes.

12 Q. And was -- were these policies applicable to
13 all three of the yards at issue in this case?

14 A. No, sir.

15 Q. Which yards were they applicable to?

16 A. Depended on who the policy came from, so I'd
17 have to look at each one of them to see.

18 Q. Okay. I'm showing you TNT 5602 through 5610.
19 Okay? And this appears to be a series of e-mails among
20 Mr. Harvey, Mr. Harrison, and you regarding these
21 policies.

22 Do you see that?

23 A. Yes, sir.

24 Q. And -- so we know that you, Mr. Harvey, and
25 Mr. Harrison were involved in these -- in the creation

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1 of these -- of at least the 2018 policy.

2 Does that help you to answer the question
3 which of the three yards at issue in this case these
4 memos applied to?

5 A. Not all of them. For this particular memo, it
6 helped me answer that question.

7 Q. And how did it help you? What's the answer to
8 the question?

9 A. This would have been applicable to the Midland
10 yard.

11 Q. Okay. What about San Antonio? Why not San
12 Antonio?

13 A. This wouldn't have involved the San Antonio
14 yard.

15 Q. Mr. Harvey is involved in a discussion about
16 it.

17 He was over the San Antonio yard, correct?

18 A. He was over the San Antonio yard, and at this
19 time he was supervising John Harrison.

20 Q. So it's your contention that San Antonio
21 followed a different policy than Hou- -- than Midland,
22 is that right?

23 A. Can you scroll down some? I want to read the
24 rest of the e-mail chain back and forth.

25 Q. (Scrolling.)

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1 A. (Reviewing document.) Yes, sir.

2 Q. So I'm sorry. Are you saying that the memo is
3 applicable to San Antonio and Midland?

4 A. No, sir. Only Midland.

5 Q. Okay. San Antonio had a similar policy
6 whereby it paid certain amounts of per diem, and if it
7 paid you a hundred dollars per diem, say, you would not
8 get drive time, right?

9 A. I have to look at it and see. It did have a
10 similar memo.

11 Q. Okay. Has that memo been produced?

12 A. Yes. It's one of the memos you have from
13 '15 or '14, one of those years.

14 Q. Okay. So when we're looking at 5599, that's a
15 April 2016 memo.

16 Was that applicable to San Antonio?

17 A. Just looking here, I can't tell.

18 Q. But you think the memo regarding San Antonio
19 has been produced, is that right?

20 A. Yes, sir.

21 Q. Is this memo regarding San Antonio 8450 --
22 TNT 8450?

23 A. This one is, yes.

24 Q. Okay. And has this memo been in effect from
25 2014 until the present in San Antonio?

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1 A. May I see the '16 memo again?

2 Q. (Scrolling.)

3 A. Scroll down, please.

4 Q. There it is.

5 Do you have it there on your screen,

6 Mr. Bell?

7 A. Yes. I'm following you.

8 Yes. The '14 memo is -- is one that would
9 be in effect with the possibility of some one-off e-mail
10 changing something in there.

11 Q. And if that one-off e-mail exists, it would
12 have been produced in this case, right?

13 A. It should -- should have been produced, yes,
14 sir.

15 Q. Now, insofar as the 2018 memo is concerned,
16 you, Mr. Harvey, and Mr. Harrison were involved in
17 promulgating that policy. True?

18 A. True.

19 Q. And, in fact, you corrected the policy at some
20 point, right? You had input into that policy by making
21 changes to it, right?

22 A. Yes, I had input into the policy.

23 Q. And at this time, did you advise Mr. Harrison
24 and Mr. Harvey that TNT had to pay drive time for the
25 operators if they performed compensable work before

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1 A. No, sir, I don't.

2 Q. Did anybody keep any notes about the telephone
3 call?

4 A. No.

5 Q. Did -- okay.

6 A. Let me say -- let me back up. I didn't keep
7 any notes about it. I can't speak for what the other
8 two did.

9 Q. Fair enough.

10 What, if anything, did TNT do to ensure
11 that each version of this drive time policy that we've
12 looked at today was lawful under the Fair Labor
13 Standards Act?

14 A. I reviewed the policy in comparison with the
15 Fair Labor Standards Act to make sure that we were
16 following the law.

17 Q. And what specific authority did you review
18 in -- to ensure that you were following the law?

19 A. That would have been the actual Fair Labor
20 Standards Act. That would have been case law checked on
21 in CLEs.

22 Q. Anything else?

23 A. I don't believe so.

24 Q. Did you keep a file on your research?

25 A. In -- in this particular case?

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1 Q. Yes, sir.

2 A. No, I would not have kept a file on my
3 research.

4 Q. Did you draft a memo?

5 A. No, I wouldn't have drafted a memo.

6 Q. Is there anything in writing about your
7 deliberations about whether or not this policy was
8 compliant with the Fair Labor Standards Act?

9 A. I'd have to review the e-mails that we turned
10 over. It may be some language in those e-mails where I
11 told them, Hey, this -- this looks good. This is --
12 this is fine.

13 Q. I'm showing you an e-mail at TNT 5602.

14 Well, do you see that there?

15 A. Yes, sir.

16 Q. Can you take a moment to review this and I'll
17 represent to you that I believe this was the last e-mail
18 that you sent about this particular drive time policy.

19 A. Let me go to the top of it, see what the very
20 top says, or is it cut off?

21 Q. (Scrolling.)

22 A. Okay.

23 Q. Yeah. That's the very top of it there,
24 Mr. Bell.

25 A. Okay. (Reviewing document.)

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1 Q. (Scrolling.)

2 A. (Reviewing document.) Scroll down a little
3 bit.

4 Q. (Scrolling.)

5 A. A little bit more.

6 Q. (Scrolling.)

7 A. That's the end?

8 Q. Let's see. This is the next page.

9 A. Okay. Any other pages?

10 Q. That's 5603.

11 A. I'm fine with that page.

12 Is there another page?

13 Q. (Scrolling.) This is -- I'm showing you now
14 5604.

15 A. (Reviewing document.) I'm fine with that
16 page.

17 Q. 5605 is the first page of an attachment.

18 A. (Reviewing document.) I'm fine with that
19 page.

20 Q. Is that right?

21 A. Yes, sir.

22 Q. 5606 is the second page.

23 A. I'm fine with that page as well.

24 Q. And we've already looked at 5607.

25 A. Okay. So this -- this e-mail would indicate

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1 that this was sent to me to make sure that this was
2 compliant, and when I replied back with things
3 highlighted and the changes that I made letting them
4 know that this e-mail was good.

5 Q. And the e-mail that you're referring to is at
6 5602 dated April 4th, 2018, at 11:38 a.m.?

7 A. That is correct.

8 Q. And it's your contention that that e-mail
9 constituted your opinion that this was compliant with
10 the FLSA?

11 A. Yes, sir.

12 Q. And this is the only writing in which you
13 express that opinion, is that right?

14 A. I believe so.

15 Q. Now, if I'm understanding your testimony
16 correctly, it is that in order for an operator to be
17 paid, that operator must detail the time that he or she
18 spends working in his or her time sheet, is that right?

19 A. The operator must explain what work they've
20 done for the time they want to be paid, yes.

21 Q. I want to go back to this April 2018 drive
22 time memo.

23 Can you explain in your own words how this
24 policy works?

25 MR. JODON: Is there a particular aspect

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1 the shorter side than the longer.

2 MR. MORELAND: Okay. I'll do my best.

3 MR. JODON: Okay.

4 THE REPORTER: Off the record.

5 (Recess from 1:00 p.m. to 1:38 p.m.)

6 Q. (BY MR. MORELAND) Mr. Bell, you testified a
7 little while ago before we broke that insofar as
8 insuring that the drive time memo was compliant with the
9 Fair Labor Standards Act you reviewed the statute and
10 case law interpreting the statute.

11 Do you recall that testimony?

12 A. Yes, sir.

13 Q. Do you remember what cases you reviewed?

14 A. I do not remember the particular cases.

15 Q. Now, what is the role of a rigger on a crane
16 operator's job site?

17 A. The rigger could have several roles. The main
18 role of the rigger is to connect whatever is being
19 lifted to the crane hook.

20 Q. And is a rigger required on most job sites?

21 A. Just really depends on the -- on the customer.

22 Q. Is it required on most job sites in the oil
23 field?

24 A. Depends on the customer.

25 Q. Can you think of a customer that doesn't

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1 require a rigger on its job sites?

2 A. I'm not in the -- in the details.

3 Q. Do you know who would know that better than
4 you?

5 A. One of the branch managers would know.

6 Q. Now, we talked earlier today about certain of
7 the supplies that the crane operator needs in order to
8 keep his crane in good working order and to be able to
9 operate the crane, fuel being one of them.

10 Do you recall that?

11 A. Yes, sir.

12 Q. And in addition to fuel, there's also diesel
13 exhaust fluid, lubricants, belts, filters, brake
14 cleaner, window cleaners.

15 These are all items that the crane
16 operator might require in order to keep his or her --
17 his crane in good working order so that he can perform
18 his job, right?

19 A. Some of them, yes, sir.

20 Q. And these items, they're maintained at each
21 branch location, is that right?

22 A. Some of the items.

23 Q. Is fuel maintained there?

24 A. At some of our branches.

25 Q. How about Midland, San Antonio, Houston? Is

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1 fuel maintained there?

2 A. Yes.

3 Q. How about oil? Does Midland, San Antonio,
4 Houston stock those items?

5 A. Yes.

6 Q. And lubricants?

7 A. Yes.

8 Q. How about brake cleaner?

9 A. I'm not sure on brake cleaner.

10 Q. How about window cleaner?

11 A. Yes.

12 Q. Who at each of the three yards is responsible
13 for maintaining the inventory of those items?

14 A. For fuel, it would be the operations manager
15 for -- or branch manager. Operation manager, branch
16 manager is the same.

17 For the brake cleaner -- or for the oil
18 or -- or window cleaner, it would be a shop manager.

19 Q. Did you say a shop manager?

20 A. Yes.

21 Q. Okay. It -- I'm not being difficult. In
22 addition, to the -- kind of the video or the online
23 aspect of this deposition, you're also wearing a mask --

24 A. Yeah.

25 Q. -- and I can see your mouth. So --

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1 required to be there.

2 Q. Did the -- did TNT require the rigger and the
3 operator to meet at the yard to ride to the job site
4 together?

5 A. That is not a blanket requirement, no.

6 Q. Under what circumstances would TNT impose that
7 requirement?

8 A. If they are dispatched that way.

9 Q. And that would be up to the dispatcher to do
10 that, is that true?

11 A. That would be up to the dispatcher to
12 communicate that.

13 Q. Okay. So if the dispatcher tells an operator,
14 Meet at such and such a day at such and such a time at
15 the yard in order to pick up your rigger, the operator
16 is required to do that. Is that true?

17 A. Yes. The operator should follow those
18 instructions.

19 Q. Now, TNT assigns company trucks to at least
20 most of the plaintiffs in the case, I believe, is
21 that -- is that correct?

22 A. All right. So depending on the branch some of
23 our operators do get company trucks.

24 Q. And how about Midland and San Antonio? Are
25 the operators assigned company trucks out of those two

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1 San Antonio branch?

2 A. As far as tie to --

3 Q. About -- let me just start that over because
4 that was probably an objectionable question.

5 MR. MORELAND: You're welcome, Mark.

6 Q. (BY MR. MORELAND) Insofar as the timekeeping
7 practices is concerned, does the Houston yard follow the
8 same timekeeping practices and policies that we've
9 talked about today with respect to the San Antonio and
10 Midland yard?

11 A. It would depend on which exact policies we're
12 referring to. I would say some are -- some are
13 followed. Some are not.

14 Q. So let me give you a concrete example. If an
15 operator out of the Houston yard does not put on his or
16 her time sheet that he's performing work in the yard
17 prior to driving to the job site, would they get paid
18 for that drive time to the job site if they don't put
19 that down?

20 A. So if the customer is paying for drive time,
21 similarly, they will get paid for drive time.

22 Q. And would you say that this is similar to the
23 policy that we looked at from 2018 applicable to the
24 Midland yard?

25 A. I'd say that portion of it, that customer

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1 paying, is -- is similar.

2 Q. Is there any other way that it's -- that it's
3 similar?

4 A. I don't want to do you like this, but I've got
5 to look at it so -- to make sure I'm not missing
6 anything.

7 Q. Well, honestly, I'm asking because I have not
8 seen a memo about the Houston yard. That -- that's why
9 I'm asking this question. So if I had something to show
10 you, I would show it to you.

11 Are you aware of a memo?

12 A. No, there is -- there is no memo.

13 Q. So what is it you would need to look at in
14 order to compare? You would need to --

15 A. I need to look at the 2018 memo so I could see
16 if the practices are the same as in the memo.

17 Q. Okay. Are you seeing it?

18 A. Yes. We can start at the top. Or is this the
19 area we'd be --

20 Q. Well, I don't know.

21 My question to you is, reviewing this
22 memo at Bates Number 5596, how is the Houston
23 timekeeping policy similar to the Midland time keeping
24 policy?

25 A. No. 1 is -- is similar under, "BELOW IS AN

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1 OUTLINE FOR YOU TO FOLLOW CONCERNING PAYROLL."

2 No. 2 is similar under that same section.

3 Q. Okay.

4 A. No. 4 is similar.

5 Q. Let me know when you're ready for me to
6 scroll.

7 A. Okay. Yes, sir. (Reviewing document.)

8 Q. Are you ready?

9 A. Not yet. No. 6 is similar.

10 Now I'm ready for you to scroll.

11 Q. (Scrolling.)

12 A. The -- the deadline to turn in time is
13 similar, but I think the time is different.

14 Q. Okay.

15 A. So this -- this gets tricky to tell you which
16 parts are similar and which parts are not similar here
17 because there's not this great distinction of a hundred
18 dollars, \$35, \$60 per diem.

19 Q. Well, as I understand it, in Houston and in
20 Midland at least, the company pays a \$35 per diem in
21 both locations if it provides lodging, right?

22 A. Correct.

23 Q. And it a pays hundred dollars per diem if it
24 does not provide lodging, right?

25 A. I said correct. That's not exactly correct.

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1 So Midland has man camps. Houston does not have man
2 camps. So there's another tier there.

3 Q. Okay.

4 A. So Houston is a -- just a different animal
5 from Midland.

6 Q. Regardless, insofar as the policy requiring
7 operators to put down all compensable time before
8 driving is concerned, those policies are the same. Is
9 that true?

10 A. Oh, Houston you must put down all compensable
11 hours, that's right.

12 Q. By the way, just so -- to be fair here, I want
13 to make sure. Because this is a two-page memo, I want
14 to go to the second page at TNT 5597 and ask you, is the
15 Houston policy similar to this one?

16 A. Part 1, pre-trip/post-trip is similar.

17 Part 3 is similar.

18 That would be it, 1 and 3.

19 Q. Okay. Thank you. Getting back to the
20 company-assigned trucks for a moment, are these trucks
21 equipped or are any of these trucks equipped with GPS?

22 A. As a general rule, no.

23 Q. Okay. You know what my next question is going
24 to be.

25 What do you mean by "as a general rule"?

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1 Q. Other than that, are there any other
2 agreements surrounding the use of the company truck?

3 A. Not that I am aware of.

4 Q. And by the way, the commutes that the
5 operators are making in the company truck are often in
6 excess of one hour.

7 Would you agree with that?

8 A. No, sir.

9 Q. Why not?

10 A. It depends on the branch.

11 Q. So people in the branch would be better suited
12 to testify about that than you, is that right?

13 A. No. I can testify to it. It just depends on
14 the branch whether that commute is going to be over an
15 hour or not.

16 Q. Okay. Let's take Midland. Midland, it's
17 often the case that the commutes are over an hour,
18 right?

19 A. I would say, yes, greater than 50 percent of
20 the time the commute's over an hour in Midland.

21 Q. And how about San Antonio? How often is the
22 commute over an hour?

23 A. That I would say is -- commute over an hour is
24 probably 40, 35 percent of the time.

25 Q. 35 to 40 percent of the time the commutes are

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1 greater than an hour out of San Antonio?

2 A. Right.

3 Q. And how about Houston? How often are the
4 commutes greater than an hour?

5 A. Maybe 15 percent of the time.

6 Q. Is there any way that you're aware of using
7 TNT's data to link up an individual operator, say the
8 plaintiffs in this case, to a truck that the company had
9 assigned them?

10 A. Is there a way to see which truck was assigned
11 to that operator? Is that what you're asking?

12 Q. Yes, sir.

13 A. Yes.

14 Q. Can you explain how that -- how we might do
15 that?

16 A. So TNT keeps an equipment list on the
17 corporate level, and if the information is relayed to
18 the corporate equipment manager of who gets assigned the
19 truck, it will be listed on the equipment list. But the
20 information is not always relayed that way.

21 Q. Who is responsible for relaying that
22 information?

23 A. That would be the operations personnel at the
24 branch, so it would vary from branch to branch.

25 Q. How about out of Midland? Who's the person

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1 facilities, and I think that's the only additional thing
2 I needed to add.

3 Q. Did TNT consult with outside counsel about
4 whether or not its drive time policies were compliant
5 with the FLSA?

6 A. No.

7 Q. Did TNT receive any complaints about the
8 failure to pay drive time?

9 A.

10 MR. JODON: Objection to form, vague.

11 What do you mean by "complaints"?

12 Q. (BY MR. MORELAND) Did any operator ever lodge
13 any oral or written complaints about TNT not paying them
14 for travel time?

15 A. Yes.

16 Q. Can you tell me about those, please?

17 A. Employees wanted to know, you know, why you
18 can get paid travel time going to a man camp site and
19 not travel time going to their own lodging.

20 Q. Do you remember which employees registered
21 those concerns?

22 A. I do not.

23 Q. Are these concerns reflected in text messages
24 that TNT has produced?

25 A. I'd have to review it. I'm not certain.

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1 Q. Were any of these complaints in writing?

2 A. I'd have to review the text messages to see if
3 it was that way. Barring that, no, I do not believe so.

4 Q. And when these complaints were -- or concerns
5 were registered with TNT, did TNT undertake a -- a
6 review of any of its compensation policies?

7 A. That would have been shortly after the memo
8 was -- was put out, so the review would have taken place
9 prior to the -- the concern being raised.

10 Q. And you've testified about everything you did
11 to review it back then, right?

12 A. Yes.

13 Q. What written administrative regulations did
14 TNT rely on in formulating its drive time policies to
15 make sure it complied with the FLSA?

16 A. Couldn't recall.

17 Q. Are there any orders or rulings by the
18 Department of Labor that TNT relied on to make sure that
19 its drive time policies were compliant with the FLSA?

20 A. I wouldn't be able to tell you the exact --
21 exact ones.

22 Q. Okay. All of the operators in this case
23 are -- well, at least while working with TNT, were
24 working under the same job description. Is that true?

25 A. Yeah. While they were operators, yes, all the

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1 operators would -- would have the same general job
2 description, yes.

3 Q. Okay. And TNT has produced one job
4 description in this case and that applies to all of the
5 operators while they were operators, correct?

6 A. That is correct.

7 Q. And the operators all performed the same
8 general work, correct?

9 A. Yes, sir.

10 Q. And they did so all in the state of Texas,
11 correct? Well, and New Mexico to some extent?

12 A. I need to look at the plaintiff list again.
13 It could have been in other states as well.

14 Q. Well, all of the -- the plaintiffs in this
15 case right now, they all worked out of either Houston,
16 San Antonio, or Midland, correct?

17 A. Correct.

18 Q. And all of the plaintiffs were paid by the
19 hour with the possibility of receiving a per diem,
20 correct?

21 A. Correct.

22 Q. And all of the crane operators were required
23 to follow the drive time policies applicable to the
24 three yards in the case that we have discussed today,
25 correct?

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1 A. No, sir.

2 MR. MORELAND: Can we take a quick break?

3 I am reaching the end.

4 MR. JODON: Sure.

5 (Recess from 2:36 p.m. to 2:47 p.m.)

6 Q. (BY MR. MORELAND) Okay. Mr. Bell, has TNT
7 been subject to any investigations for any alleged wage
8 and hour violations?

9 A. No, sir.

10 Q. And did the riggers have vehicles assigned to
11 them by TNT if they were working at a TNT -- or the
12 Midland, San Antonio, or Houston yards?

13 A. They would not regularly have a vehicle
14 assigned to them, no, sir.

15 Q. Are you aware of any rigger who had a vehicle
16 assigned to him?

17 A. Assigned to him, no, sir.

18 Q. And what I mean by "vehicle" is a company
19 vehicle assigned by TNT.

20 A. Correct.

21 Q. So if the operator had a vehicle assigned and
22 a job required a rigger on site, it was up to the
23 operator to transport the rigger to the job site,
24 correct?

25 A. Incorrect.

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1 Q. What's incorrect about that?

2 A. It's not up to -- it wasn't up to the operator
3 to transport the rigger to the job site.

4 Q. If the dispatcher told the operator to
5 transport the rigger to the job site, then it became
6 incumbent on the operator to do that. Is that true?

7 A. Yes, sir.

8 Q. But you have -- without getting into the
9 substance of the documents, y'all have produced some
10 price lists and some MSAs and some other similar
11 documents concerning whether or not certain customers of
12 yours paid drive time, overtime and per diem.

13 Do you remember that -- those documents?

14 A. Yes, sir.

15 Q. It's fair to say that certain customers pay
16 drive time, overtime, and per diem and others don't. Is
17 that right?

18 A. Yes, sir.

19 Q. And the documents that you have produced in
20 this case, do those documents accurately reflect which
21 customers paid overtime, drive time, and per diem?

22 A. The documents that we produced are accurate,
23 yes, sir.

24 Q. And do those documents accurately reflect all
25 of the customers who paid overtime, drive time, and per

ANTOY BELL - VOLUME 1 - July 15, 2020

1 CHANGES AND SIGNATURE

2 WITNESS NAME: ANTOY BELL

3 DATE OF DEPOSITION: JULY 15, 2020

4 PAGE LINE CHANGE REASON

5 35 13 "is not required" add the word not6 110 12 replace "claim" with "crane" wrong word

7

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ANTOY BELL - VOLUME 1 - July 15, 2020

1 I, ANTOY BELL, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted above.

Antoy Bell

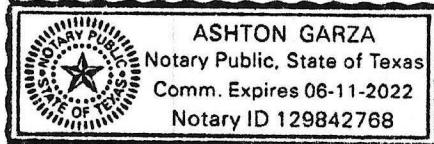
ANTOY BELL

7
8 THE STATE OF Texas)
9 COUNTY OF Harris)

10
11 Before me, Ashton Garza, on this day
12 personally appeared ANTOY BELL, known to me (or proved
13 to me under oath or through Known to me)
14 (description of identity card or other document)) to be
15 the person whose name is subscribed to the foregoing
16 instrument and acknowledged to me that they executed the
17 same for the purposes and consideration therein
18 expressed.

19 Given under my hand and seal of office this
20 22 day of December, 2020.

Don



NOTARY PUBLIC IN AND FOR

THE STATE OF Texas

COMMISSION EXPIRES: 06/11/22

ANTOY BELL - VOLUME 1 - July 15, 2020

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 MIDLAND/ODESSA DIVISION

4 TIMOTHY W. REPASS AND)
5 WILLIAM SCOTT MCCANDLESS,)
6 INDIVIDUALLY AND ON)
7 BEHALF OF ALL OTHERS)
8 SIMILARLY SITUATED,) CIVIL ACTION
9)
10 Plaintiffs,) NO. 7:18-CV-107-DC-RCG
11)
12 VS.)
13)
14 TNT CRANE AND RIGGING,)
15 INC.,)
16)
17 Defendant.)

18 **Amended**

19 REPORTER'S CERTIFICATION
20 ORAL DEPOSITION OF
21 ANTOY BELL
22 July 15, 2020
23 Volume 1
24 (REPORTED REMOTELY)

25 I, Julie A. Jordan, Certified Shorthand Reporter in
and for the State of Texas, hereby certify to the
following:

That the witness, ANTOY BELL, was duly sworn by the
officer and that the transcript of the oral deposition
is a true record of the testimony given by the witness;

That the original deposition was delivered to
Mr. Edmond S. Moreland, Jr.;

That a copy of this certificate was served on all
parties and/or the witness shown herein on 7/27/2020.

That the amount of time used by each party at the

ANTOY BELL - VOLUME 1 - July 15, 2020

1 deposition is as follows:

2 EDMOND S. MORELAND, JR. - 04 HOUR(S):00 MINUTE(S)
3 G. MARK JODON - NONE

4 I further certify that pursuant to FRCP Rule 30 (f)
5 (1) that the signature of the deponent:

6 XXXXX was requested by the deponent or a party
7 before the completion of the deposition and that the
8 signature is to be before any notary public and returned
9 within 30 days from date of receipt of the transcript.
10 If returned, the attached Changes and Signature Pages
11 contain any changes and reasons therefore:

12 _____ was not requested by the deponent or a party
13 before the completion of the deposition.

14 I further certify that I am neither counsel for,
15 related to, nor employed by any of the parties or
16 attorneys in the action in which this proceeding was
17 taken, and further that I am not financially or
18 otherwise interested in the outcome of the action.

19 Certified to by me this 27th of July 2020.



20 Julie A. Jordan, Texas CSR 3203
21 Expiration Date: 1/31/22
22 Firm Registration No. 280
23 JULIE A. JORDAN & COMPANY
24 7800 North MoPac Expressway
25 Suite 120
Austin, Texas 78759
(512) 451-8243
(512) 451-7583 (Fax)
E-MAIL: info@jordanreporting.com

ANTOY BELL - VOLUME 1 - July 15, 2020

1 COUNTY OF TRAVIS)

2 STATE OF TEXAS)

3

4 I hereby certify that the witness was notified on

5 7/27/2020 that the witness has 30 days

6 (or days per agreement of counsel) after being

7 notified by the officer that the transcript is available

8 for review by the witness and if there are changes in

9 the form or substance to be made, then the witness shall

10 sign a statement reciting such changes and the reasons

11 given by the witness for making them;

12 That the witness' signature was ~~was~~ returned as

13 of 12/22/2020.

14 Subscribed and sworn to on this 22nd day of

15 December, 2020.

17 *Julie A. Jordan*

18 Julie A. Jordan, Texas CSR 3203

19 Expiration Date: 1/31/22

20 Firm Registration No. 280

21 JULIE A. JORDAN & COMPANY

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